

NOTICE
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2018 IL App (5th) 150342-U

NO. 5-15-0342

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | St. Clair County. |
| |) | |
| v. |) | No. 07-CF-1342 |
| |) | |
| CLAUDE L. WILLIAMS, |) | Honorable |
| |) | Zina R. Cruse, |
| Defendant-Appellant. |) | Judge, presiding. |

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Moore and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err when it recharacterized defendant's *pro se* motion as a petition for postconviction relief without affording defendant *Shellstrom* admonishments where the petition was advanced to the second stage of review and postconviction counsel was appointed, thereby rendering the *Shellstrom* admonishments unnecessary.

¶ 2 Defendant, Claude L. Williams, appeals from the second stage dismissal of his postconviction petition. On appeal, defendant alleges the trial court erred when it recharacterized his *pro se* motion to amend/correct mittimus as a petition for postconviction relief without affording him *Shellstrom* admonishments and an opportunity to withdraw or amend his pleading. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 Defendant was charged by the St. Clair County State's Attorney's Office (State) with two counts of first-degree murder on November 7, 2007, in relation to the deaths of Homer Watson and Kavon Chandler. 720 ILCS 5/9-1(a)(1) (West 2006). Thereafter, defendant filed a motion to sever the charges, which the trial court granted.

¶ 5 On May 18, 2011, the State informed the trial court that it charged defendant with a third count of second-degree murder for the death of Kavon Chandler. 720 ILCS 5/9-2(a)(2) (West 2006). The State explained the parties agreed to proceed to a stipulated bench trial in which the State would present sufficient evidence to support a charge of first-degree murder, but the defense would present evidence that defendant was operating under a mistaken or unreasonable belief of self-defense. The State explained this factor would mitigate the charge of first-degree murder to a charge of second-degree murder. Additionally, after the finding as to second-degree murder, the State explained both parties would agree to waive their right to a presentence investigation, and there would then be a joint recommendation to the court of 12 years in the Illinois Department of Corrections. The State agreed defendant would receive credit for time already served.

¶ 6 Based upon the parties' stipulation, the court found defendant guilty of second-degree murder. 720 ILCS 5/9-2(a)(2) (West 2006). Defendant was sentenced to 12 years in the Illinois Department of Corrections with 2 years of mandatory supervised release and was awarded 1329 days of credit for time already served.

¶ 7 On August 15, 2013, the State charged defendant with a fourth count of aggravated battery with a firearm for discharging a firearm which caused injury to Homer

Watson. 720 ILCS 5/12-3.05(e)(1) (West 2010). The State informed the court the parties had a negotiated plea agreement subject to the court's approval which would entail defendant's pleading guilty to the fourth count of aggravated battery with a firearm. 720 ILCS 5/12-3.05(e)(1) (West 2010). In exchange, the State would dismiss the count of first-degree murder that had previously been filed on November 7, 2007. Under the agreement, defendant would serve 10 years in prison at 85% truth in sentencing, which had to be served consecutively to the sentence defendant was currently serving on the third count of second-degree murder. Defendant would also serve three years of mandatory supervised release. Defendant pleaded guilty to the count of aggravated battery with a firearm and was sentenced in accordance with the negotiated plea agreement.

¶ 8 Defendant filed a notice of appeal on September 12, 2013, which was dismissed for noncompliance with Illinois Supreme Court Rule 604(d) (eff. Feb. 6, 2013). The trial court filed an amended mittimus on September 23, 2013, following defendant's guilty plea to aggravated battery with a firearm. 720 ILCS 5/12-3.05(e)(1) (West 2010). The amended mittimus indicated defendant was sentenced to 10 years in prison with 3 years of mandatory supervised release, which was to run consecutive to the 12-year sentence imposed for second-degree murder. The amended mittimus further noted there would be no additional credit given on the count of aggravated battery with a firearm.

¶ 9 Defendant filed a *pro se* motion to amend/correct mittimus on March 4, 2014, asserting he was entitled to additional credit for time served against his sentence. Specifically, defendant argued he was entitled to 1317 days of credit toward his 10-year

sentence for aggravated battery with a firearm. The trial court entered an order on April 4, 2014, in which it set a hearing on defendant's motion for April 28, 2014. The court ordered that defendant did not need to appear at the hearing and stated "[d]efense counsel to confirm whether [defendant] is due any additional credit toward his sentence[.]"

¶ 10 The trial court entered an order on April 28, 2014, noting that neither counsel for the State nor defendant found an error in the sentencing calculations employed for defendant. The court ordered the St. Clair County circuit clerk to send the order to defendant, who was given 30 days to advise the court whether he would proceed with his motion. The matter was set for a hearing on May 30, 2014.

¶ 11 The circuit clerk received a handwritten letter from defendant on August 8, 2014, in which defendant stated he did not receive the April 28, 2014, order from the circuit clerk's office until July 9, 2014. Defendant stated he did not know how to proceed because he lacked proper representation. He further requested the court's ruling on his motion. On October 23, 2014, the circuit clerk received a letter from defendant which stated: "I received your order as to my Motion to Amend/Correct Mittimus On October, 07, 2014, in response to this order, I wish to proceed with my motion."

¶ 12 The court entered an order on December 15, 2014, noting defendant had a postconviction pleading pending, which was defendant's motion to correct mittimus. The court acknowledged defendant wished to proceed with his motion and appointed counsel to represent him. Thereafter, orders entered by the court on January 15, 2015, and February 18, 2015, referred to defendant's pleading as a postconviction pleading.

¶ 13 Defendant's appointed counsel filed a petition for postconviction relief (amendment to motion to amend/correct mittimus) on April 13, 2015. The petition explained that on or about August 15, 2013, defendant entered a plea of guilty to aggravated battery/discharge of a firearm and was sentenced to 10 years in prison with 3 years of mandatory supervised release. At the time of the plea and sentencing, defendant was serving a 12-year sentence for a separate count. The petition asserted:

"While it was explained that the sentences under the 2 Counts were to run consecutively, there was no recorded admonition or discussion relative to the 1,317 days credit to which [defendant] was entitled as a result of his incarceration prior to sentencing on either Count."

The petition argued defendant was denied effective assistance of counsel as a result of counsel's failure to adequately explain that the 1317 days of credit had been exhausted by defendant's initial sentence and, therefore, could not be used against the current sentence. The petition asserted that at the time of his plea and sentencing, defendant believed he would be entitled to 1317 days of credit against the current 10-year sentence. The petition further asserted that, as a result of counsel and the court's failure to properly admonish defendant, he was denied the benefit of his bargain and his plea was not knowing and voluntary. Defendant requested that his August 15, 2013, sentence be set aside and that he be sentenced consistently with what he reasonably believed was the sentence to which he agreed.

¶ 14 The State filed a motion to dismiss defendant's petition for postconviction relief on May 5, 2015, which the trial court granted following a hearing. Defendant filed a timely notice of appeal.

¶ 15 ANALYSIS

¶ 16 The single issue we are asked to address on appeal is whether the trial court erred when it recharacterized defendant's *pro se* motion to amend/correct mittimus as a petition for postconviction relief without affording defendant *Shellstrom* admonishments and an opportunity to withdraw or amend his pleading. Citing our supreme court's decision in *People v. Stoffel*, 239 Ill. 2d 314 (2010), the State maintains the trial court did not err when recharacterizing defendant's *pro se* pleading because the court advanced the petition to the second stage of review and appointed postconviction counsel, thereby rendering the *Shellstrom* admonishments unnecessary.

¶ 17 In *People v. Shellstrom*, 216 Ill. 2d 45, 52-53 (2005), our supreme court reaffirmed that a trial court may treat a defendant's *pro se* pleading as a postconviction petition if the pleading alleges a deprivation of rights cognizable in a postconviction proceeding, even where the pleading is labeled differently. When a trial court decides to recharacterize a defendant's pleading, our supreme court in *Shellstrom* set forth certain admonishments that must be given to the defendant to ensure the defendant is aware of the consequences of the recharacterization and to allow for the defendant to amend or withdraw the petition. *Shellstrom*, 216 Ill. 2d at 57. Specifically, the trial court must:

- "(1) notify the *pro se* litigant that the court intends to recharacterize the pleading,
- (2) warn the litigant that this recharacterization means that any subsequent

postconviction petition will be subject to the restrictions on successive postconviction petitions, and (3) provide the litigant an opportunity to withdraw the pleading or to amend it so that it contains all the claims appropriate to a postconviction petition that the litigant believes he or she has." *Shellstrom*, 216 Ill. 2d at 57.

¶ 18 Whether the trial court complied with applicable procedure is a question of law reviewed *de novo*. *People v. Helgesen*, 347 Ill. App. 3d 672, 675 (2004).

¶ 19 Here, the record shows *Shellstrom* admonishments were not given to defendant regarding the trial court's decision to recharacterize defendant's *pro se* motion to amend/correct mittimus as a petition for postconviction relief. However, as we will discuss below, *Shellstrom* admonishments were not required in this case because the court advanced the petition to the second stage of review and appointed defendant postconviction counsel.

¶ 20 In *People v. Stoffel*, 239 Ill. 2d 314, 328 (2010), our supreme court determined that where "a defendant's *pro se* petition is not summarily dismissed but is instead advanced for further review, and counsel is appointed to represent the defendant, *Shellstrom* admonitions are unnecessary." In reaching this conclusion, the court explained that *Shellstrom* admonitions were designed for *pro se* litigants, not litigants represented by counsel. Specifically, our supreme court explained:

"The *Shellstrom* admonitions are designed to protect the rights of *pro se* defendants and, in particular, to inform them of the limitation on filing successive postconviction petitions and the need to amend their initial petition to include all

possible postconviction claims. [Citation.] But this is precisely the role performed by appointed counsel, who is required to consult with the defendant and make any amendments to the *pro se* petition that are necessary. [Citations.] Thus, *** the concerns raised in *Shellstrom* do not apply when counsel is present [citation], and the absence of admonitions in no way prejudices the defendant." *Stoffel*, 239 Ill. 2d at 328.

¶ 21 In this case, the trial court recharacterized defendant's *pro se* motion as a petition for postconviction relief without providing defendant *Shellstrom* admonishments, but advanced the petition to the second stage of review and appointed defendant postconviction counsel. Postconviction counsel subsequently handled the proceedings in this matter. After careful consideration, we find *Stoffel* is dispositive of this appeal. Again, the *Shellstrom* admonishments are designed to protect the rights of *pro se* defendants and to inform them of the limitation on filing successive postconviction petitions and the need to amend their initial petition to include all possible postconviction claims. *Stoffel*, 239 Ill. 2d at 328. However, this is the role performed by appointed counsel, who is required to communicate with the defendant and make necessary amendments to the *pro se* petition. *Stoffel*, 239 Ill. 2d at 328. Thus, the concerns raised in *Shellstrom* do not apply when counsel is present, and the absence of admonitions in no way prejudices the defendant. *Stoffel*, 239 Ill. 2d at 328. Accordingly, because defendant's petition was advanced to the second stage of review and postconviction counsel was appointed, *Shellstrom* admonishments in this case were not required and their absence did not prejudice defendant.

¶ 22 Despite acknowledging *Stoffel*, defendant nonetheless argues he should have been afforded *Shellstrom* admonishments before his pleading was recharacterized because, even after he was appointed counsel, he lost the right to raise additional claims in the recharacterized petition. Defendant argues this appeal presents an argument not considered in *Stoffel*, as there may have been additional claims of a constitutional magnitude that defendant would have added to his petition for postconviction relief had he known his motion would be recharacterized. However, defendant argues his counsel was not required to add new claims to his petition, and he is now unable to raise those claims in future proceedings unless he meets an additional requirement, such as the cause and prejudice standard. We disagree.

¶ 23 Contrary to defendant's argument, additional claims could have been raised in the amended postconviction petition after he consulted with his postconviction counsel. We reiterate "this is precisely the role performed by appointed counsel, who is required to consult with the defendant and make any amendments to the *pro se* petition that are necessary." *Stoffel*, 239 Ill. 2d at 328. We further note it is well settled that postconviction counsel is not required to amend a postconviction petition to add claims not already alleged in the *pro se* petition or to explore potential claims. *People v. Pendleton*, 223 Ill. 2d 458, 475-76 (2006). For these reasons, we reject defendant's argument.

¶ 24 CONCLUSION

¶ 25 For the foregoing reasons, we reject defendant's request to remand this cause with directions to admonish defendant regarding the recharacterization of his pleading. Accordingly, the judgment of the circuit court of St. Clair County is hereby affirmed.

¶ 26 Affirmed.